

# **DRAFT EA APPENDICES**

Appendix 1. Draft Candidate Conservation Agreement with Assurances for fluvial Arctic grayling in the upper Big Hole River

## Appendix 2. Montana Fish, Wildlife and Parks electrofishing and fish handling protocols

## **A. ELECTROFISHING METHODS POLICY**

### **INTRODUCTION**

The growing interest in and use of Montana's fisheries resources by the public places ever increasing demands for obtaining information about our fish populations. Electrofishing has been a common fisheries sampling tool for over thirty years in Montana and it continues to be an important method for sampling fish populations today. Electrofishing is one of the few methods that allows fishery professionals to quantitatively sample fish populations for assessment of, among others, population dynamics, age and growth, and movement.

Over the years, injury to fish and other organisms as a result of electrofishing was known to occur but was generally considered to be of a minor and inconsequential nature. However, in 1988 a publication by Sharber and Carathers documented serious injury to large rainbow trout captured by electrofishing. The resulting publicity caused many agencies, including the Montana Department of Fish, Wildlife and Parks (MDFWP), to examine their own electrofishing practices.

Since 1989, MDFWP has tested a variety of electrofishing systems on a number of fish species (Fredenberg, W., 1992. *Evaluation of electrofishing-induced spinal injuries resulting from field electrofishing surveys in Montana*. Montana Department of Fish, Wildlife and Parks, Helena. Unpublished report. 43 p.) The study demonstrated a significant rate of injury to certain fish species with particular electrofishing gear. These results prompted a re-evaluation of previously accepted electrofishing practices and the development of guidelines for acceptable equipment type and use.

Electrofishing may result in adverse consequences for affected fish of a variety of species and life history stages. The presence of injuries under some circumstances dictates a conservative policy until more specific data are available. Injury should be assumed to occur unless information indicates otherwise. It is therefore the determination of the Fisheries Division that all electrofishing by any entity operating in the waters of the State of Montana conform to the following policy. Modification of this policy may be adopted as additional information becomes available.

### **POLICY**

It is the policy of the MDFWP that all electrofishing conducted in the waters of the State of Montana conform to the following standards to minimize injury to aquatic life. This policy shall apply to employees of MDFWP, other state and federal agencies and those entities operating under the authority of a collector's permit issued by MDFWP. The only exceptions to this policy are for permanent collections where all fish sampled are killed, or for experimental purposes. Exceptions must be approved by the Fisheries Division Administrator and such requests must be submitted with written justification at least sixty (60) days in advance. No other electrofishing may be conducted. Any violation of this policy will be referred to the Administrator of the Fisheries Division for corrective action.

### **STANDARDS**

1. Each electrofishing effort should be preceded by an analysis weighing anticipated negative impacts on aquatic life against benefits to be gained from the data collected. Other methods of data collection should be considered in this analysis.
2. Electrofishing over spawning areas containing eggs or larvae will be conducted only when eggs are needed for government hatcheries or the data to be collected are critical to the well being of the fish population as determined by the regional fisheries manager.

3. The use of electrofishing gear in waters containing Species of Special Concern should be minimized. Prior approval must be given by the regional fisheries manager before electrofishing in these waters.
4. Electrofishing in areas where threatened or endangered aquatic species may be encountered is restricted to situations in which electrofishing gear and methodology have been shown to be of minimal impact to that species or a recovery team has determined that electrofishing will be in the best interest of the threatened and endangered species. Authorization for "take" from the U.S. Fish and Wildlife Service must be obtained before electrofishing in waters that contain federally listed threatened or endangered species.
5. Electrofishing units which produce only 60 HZ pulsed DC waveforms are prohibited (e.g., Coffelt VVP2C, VVP2E, etc.). Settings on units that provide rectified sine, capacitor discharge or AC waveforms may not be used.
6. Settings on electrofishing units that produce pulse rates in excess of 30 HZ per second are not allowed in waters containing self-sustaining salmonid populations. The use of higher pulse rates for collection of warm/coolwater species should occur only after consideration has been given to the effect of this electrical form on these species and prior approval has been received by the regional fisheries manager.

#### PRACTICES

The following guideline table should be consulted before selecting and operating electrofishing equipment. The mention of specific brands and models of equipment is based solely on the electrical characteristics specified above. Other brands and models are excluded from this table due to lack of information. The MDFWP does not endorse any specific brand or model of electrofishing equipment.

Questions or comments on this policy should be directed to Fisheries Division, MFWP, PO Box 200701, Helena MT 59620-0701.

### **MONTANA ELECTROFISHING GUIDELINES**

<b>PARAMETER</b>	<b>RECOMMEND</b>	<b>AVOID</b>
<i>Pulse Rate</i>	30 Hz or less	Over 30 Hz
<i>Pulse Duration</i>	5 milliseconds	10 milliseconds or >
<i>Pulse Shape</i>	Smooth DC – Best  CPS – Second Choice  Square – Third Choice	Rectified Sine  Capacitor Discharge  AC
<i>Voltage</i>	High Conductivity= use low voltage  Low Conductivity = use high voltage	
<i>Shocker Box</i>	Coffelt Mark 22M  Coffelt Mark 22 CPS  Coffelt VVP 15 (smooth DC or low pulse rates)  Leach/Fisher (smooth DC only)	Coffelt VVP2C  Coffelt VVP2E  Leach/Fisher Pulse
<i>Generator</i>	Low Conductivity (<200 umhos/cm 2,500 W or >)  High Conductivity (>200 umhos/cm) 5,000 W or >)	Inadequate power supply/generator
<i>Electrode</i>	Bigger is Better – Always use largest possible anode except in highest conductivity water (800 umhos/cm or >)  Always maximize cathode size, in metal boats use the boat.	Small point anodes such as a single dropper.  Never use small cathode.
<i>Method</i>	Mobile Anode – Best	Never allow fish to lie in field
<i>Intensity</i>	Turn power down to the lowest effective level	Excessive current
<i>Brands</i>	Look for brands. If numerous, turn power down.	Branded fish are an indicator of spinal injury.

## **MONTANA ELECTROFISHING GUIDELINES**

<b>PARAMETER</b>	<b>RECOMMEND</b>	<b>AVOID</b>
<i>Fish Species</i>	<i>Most susceptible to spinal injury – Rainbow Trout Cutthroat Trout Brown Trout  Less Susceptible Arctic Grayling  Unknown Susceptibility Warmwater Spp.</i>	<i>Never assume fish are not being injured based only on external appearance.</i>
<i>Fish Size</i>	<i>Exercise caution with large fish.</i>	<i>Do not assume small fish are immune to spinal injury.</i>
<i>Environmental Variables</i>	<i>Record water temperature and conductivity and adjust methods accordingly.</i>	<i>Do not ignore water conditions.</i>
<i>Eggs</i>	<i>Assume eggs in redds have potential to be damaged.</i>	<i>Avoid shocking spawning females and areas with redds.</i>
<i>Crew</i>	<i>Use trained crews.</i>	<i>Avoid multiple-dipping into the field and other factors that will stress fish.</i>

### **B. ELECTROFISHING SAFETY POLICY & GUIDELINES**

All electrofishing operations will be conducted in accordance with Montana Department of Fish, Wildlife and Parks electrofishing guidelines, using only trained electrofishing crew members. All equipment must be constructed and operated according to approved electrofishing guidelines.

#### **General Electrofishing Guidelines**

Electrofishing guidelines are set up to provide the groundwork for electrofishing crews to safely and efficiently perform their work duties. There are several factors affecting a safe, efficient electrofishing operation; primary among these are experienced personnel, safe equipment, and updated training.

- I. Experienced Personnel – All electrofishing crews must be led by a crew leader who has taken a Fish, Wildlife and Parks safety standards course.
  - a. Crew leader – Must receive formal training in water safety, electrofishing theory and electrical safety.
  - b. Crew member – Must receive some form of water safety instruction and be instructed by the crew leader in current electrofishing safety techniques for expected electrofishing type and water conditions.

- II. Safe Equipment – Electrofishing equipment must be maintained in good working order. It must be constructed and operated according to Fish, Wildlife and Parks safety standards. The crew must be trained in its safe operation and maintenance.
- III. Guidelines for Specific Electrofishing Operations – Each type of electrofishing has its own specific operational and safety procedures, which the crew leader is responsible for implementing.
- IV. Continued Safety Training – Safety training of all electrofishing crews will be updated with new equipment and safety procedures as they become available.

### **Specific Electrofishing Guidelines**

- I. Experienced Personnel
  - A. All fisheries personnel that use electrofishing equipment as a management tool will be familiar with equipment and its safe operation.
  - B. At least one member of each electrofishing crew (crew leader) will have taken the Montana Department of Fish, Wildlife and Parks electrofishing safety course. All other crew members must take a standard one day electrofishing safety and training course taught by a trained crew leader which will include equipment and safety checklists and a “dry run” with no electricity in the water.
  - C. All electrofishing crew members must be able to swim 25 yards with a personal flotation device (life jacket) and waders on.
  - D. At least two members of every electrofishing crew must have current certification in CPR (Cardio-Pulmonary Resuscitation).
  - E. All crew members must be physically fit and must report known health problems to their supervisor.
- II. Safe Equipment
  - A. Personal Equipment
    - 1. All personnel on the electrofishing crew must be equipped with waterproof footwear that is free of leaks. Belted chest-high waders or neoprene waders with slip-resistant soles are generally recommended for most electrofishing to provide adequate boot height to prevent body contact with the water. Neoprene waders are available for cold weather electrofishing.
    - 2. All personnel on the electrofishing crew must wear waterproof rubberized gloves that are free of leaks.
    - 3. The wearing of polarized sunglasses is recommended to increase in-water visibility (safety) and the effective retrieval of fish.
    - 4. At the crew leader’s discretion (with the exception of boom shocking on large rivers or in lakes), crew members will wear a personal flotation device.
    - 5. All electrofishing boats must carry a first aid kit. Spare clothing and fire-starter supplies, packed in a waterproof storage bag, are also recommended.
  - B. General operational safety procedures



1. The anode should never touch the cathode or any other metal equipment.
2. All equipment will be given a thorough inspection before use.
3. Electrofishing will not be conducted if climatic or water conditions are such as to pose safety problems beyond those normally expected.
4. If any person feels an electric shock, even minor, the electrofishing operation must be shut down and repaired. A report on the incident must be given to the regional fisheries manager or your immediate supervisor.
5. "Dip" net handles that have metal cores will be covered with a non-conductive material and then frequently inspected for cracks. Rubber butt-caps must be in place.

### III. Guidelines for Various Types of Electrofishing

- A. Large River Fixed-Electrode (boom) Electrofishing; generally jet-boat propulsion but may also be rowed.
  1. A minimum crew of two personnel, of which at least one must be a trained crew leader.
  2. Only crew members experienced in motorized river boat operation may drive the electrofishing boat. Untrained boat operators may drive the boat only under the direct supervision of the trained personnel by their side.
  3. The electrofishing boat can be constructed of either metal or nonmetal, and when it is of metal construction, the hull of the boat should be used as a cathode.
    - a. All internal metal equipment must be grounded to the boat.
    - b. Skid-proof decking is required on the netting platform.
  4. There should be a guard rail 36-48 inches above the netting platform to protect "dip" netters from falling out of the boat during electrofishing operation.
  5. "Positive" kill switches for the electrofishing circuit must be installed, with one switch in easy reach of boat operator and one for the dip netter(s). It is recommended that a "positive" kill be installed for the boat operator that will also shut off the generator.
  6. Crew leader should have a good knowledge of the water hazards present in each of his electrofishing sections. All new sections must be "run" in the boat prior to electrofishing.
  7. A functional fire extinguisher must be carried in a readily-accessible location in the boat.
  8. A first-aid kit must be carried in the boat.
  9. Crew members must wear some form of personal flotation device at all times.
  10. An extra change of clothing and dry matches are recommended for crew members, if space is available.
  11. Wearing of hearing protection devices is optional but recommended.
  12. Night electrofishing
    - a. Primary lighting must be a 12-volt system to avoid blackouts if the generator malfunctions. A 110- or 220-volt lighting system is recommended as a secondary or accessory system.

- b. The electrofishing boat must carry a fully charged spare 12-volt battery and a flashlight.
- c. The boat must be equipped with a 12-volt spotlight hand-held by the driver and used to navigate boating hazards. The 12-volt system must be semi-permanently grounded to prevent possible blackouts from circuit disruption (not alligator clips).
- d. All lighting should be equipped with in-line switches rather than using a battery terminal disconnect.
- e. Night electrofishing will be conducted only after the reach or body of water has been thoroughly scouted and preferably electrofished during daylight hours first.
- f. Electrofishing boats should be equipped with internal lighting sufficient to light the deck and the area behind the deck around the fish holding tank.
- g. On large or remote lakes or streams it may be advisable to carry an extra motor. At a bare minimum, night shocking crews should have sufficient gear to spend the night out if a breakdown occurs.

13. Electrofishing observers

Untrained observers will be allowed as a secondary dipnetter only after a thorough briefing on the safety aspects of the operation, and only when accompanied on the netting platform by a trained crew member (primary dipnetter).

B. Drift Mobile or Boom Electrofishing (no motor)

This refers to an electrofishing operation where two people remain in the boat and one person in the water controls the boat, generally small or medium-sized rivers.

- 1. A minimum crew of two personnel of which one must be a trained crew leader, with only experienced personnel handling the boat.
- 2. Electrofishing boat must be constructed of a non-conductive material with all internal metal equipment having a common ground, but not grounded to the external cathode.
  - a. Skid-proof decking is required on the netting platform.
  - b. Only plastic gas containers may be used.
- 3. There must be a 36-48 inch guardrail to protect netters from falling out of the boat during the electrofishing operation.
- 4. Mobile anode handles must be made of a non-conductive material and electric cord frequently inspected for weak spots.
- 5. "Positive" kill switches must be installed in the electrofishing circuit, with one located near boat operator and one near "dip" netters and anode operator. It is recommended that the rear kill switch also be installed so that it will kill the generator.
- 6. Crew leader should have a good knowledge of water hazards present in each shocking section.
- 7. Wearing of hearing protection is optional, but is recommended.
- 8. A functional fire extinguisher must be carried in the boat, mounted in a readily accessible location.
- 9. Crew members must wear some form of personal flotation device unless the crew leader designates it optional on a particular water.

10. It is recommended that crew members should have an extra change of clothes and dry matches, if space in the boat is available, especially during cold weather shocking.
11. No observers will be allowed in the electrofishing boat. They must either observe from the bank or from another boat.

C. Portable Drift Electrofishing

This type of electrofishing is a hybrid of drift and bank shocking where a boat is used to carry the generator and other shocking equipment, but electrofishing personnel do not normally ride in the boat (Crawdadd shocking).

1. A minimum crew of three personnel of which one must be a trained crew leader, with only experienced personnel handling the boat and shocker unit.
2. The electrofishing boat must be constructed of a non-conductive material with all internal metal having a common ground, but not grounded to the external cathode. Only plastic gas cans can be carried in the boat.
3. Mobile anode handles must be made of a non-conductive material and electric cord frequently inspected for weak spots.
4. "Positive" kill switches must be installed in the electrofishing circuit, with one located near the boat operator.
5. Crew leader should have a good knowledge of water hazards present in each shocking section.
6. Wearing of hearing protection is optional.
7. A fire extinguisher must be carried in the boat.
8. Crew members must wear some form of personal flotation device unless the crew leader designates it optional on a particular water.
9. It is advisable that crew members have an extra change of clothing and dry matches.
10. No observers will be allowed in the immediate vicinity of the electrofishing operation.
11. In deep water the anode operator may sit (not stand) on the foredeck of the boat. The dipnetter may not ride in the boat under any circumstances while the electrofishing operation is under way.

D. Backpack Electrofishing

1. A minimum crew of two personnel of which one member must be a trained crew leader.
2. The backpack unit must be equipped with a quick release belt.
3. When battery-powered units are used, a gel-cell leak-proof battery should be used to minimize acid burn possibilities.
4. An "excessive tilt" electrical shutoff for electric current will be installed on the backpack unit.
5. Mobile anode must contain a "deadman" type switch in the handle to break the electrical current. The handle must be constructed on a non-conductive material. Taping down the deadman switch is a serious safety hazard, and is prohibited.
6. Observers may be used in this type of electrofishing operation, but only as a secondary dipnetter or to transport fish up or downstream to "livecars".

E. Bank Electrofishing

This refers to the method of placing a generator on the bank and running a cord upstream or downstream. Due to the safety implications this method should be avoided unless absolutely necessary.

1. A minimum crew of two personnel of which one member must be a trained crew leader.
2. The bank electrofishing unit (generator and electrofishing box) must have a common ground to earth to reduce shock hazard.
3. The bank electrofisher must have a "positive" kill switch for both the electrode operator and the dip netter. These positive kill switches must be either made waterproof or operate off of a 12 volt safety circuit.
4. Observers must remain on the stream bank and not enter the stream during the electrofishing operation.



# **Montana Fish, Wildlife & Parks**

## **Fisheries Division Gill Netting Guidelines 2002**

Gill nets are a standard management tool, widely used within the Fisheries Division. They are also potentially lethal to personnel who utilize them. The following suggestions on conditions for use of gill nets have been developed by the Electrofishing/Water Safety Committee to provide guidance for safe working conditions for those new to gill net use, and as a reminder for more experienced personnel.

1. Never, ever, work alone! Gill nets have a deadly affinity for zippers, pull tabs, buttons, rings, and fingers. Entanglement in a net can be impossible to escape without assistance. Do not set or pull gill nets by yourself.
2. Dress for success. Minimize exposed clothing with buttons, zippers, etc. that are prone to tangling. Some raincoats, hooded sweatshirts, etc. are well-adapted to this operation. Remove rings, watches, nose rings, or earrings, before handling nets.
3. Life Preservers. Wear them always, preferably under smooth external clothing.
4. Boats. Use enough boat for the water you are on! Float tubes, inflatable vinyl rafts, etc. will not do the job. The boat must be sufficient to handle the worst-case scenario, which includes hung up nets or bad weather. Use great care with motors. An entangled motor will stall, causing the boat to turn stern toward the waves and swamp in rough water.
5. Weather. Check the forecast! A boat suitable for setting nets in light water may be totally unsafe for rough water retrieval. If the nets cannot be safely pulled, let them fish until the weather improves. Better the fish die than you.
6. Net Loss. No one wants a lost net. They fish for a long time. Use adequate anchors and strong buoy lines. Be sure that both ends are marked with brightly-colored buoys and identified with DFWP lettering. Floating nets should be marked in several places along their length.
7. Helicopter Netting. This is an irreplaceable but inherently dangerous technique for sampling mountain lakes. Always wear a life preserver. A lifeline may be useful. Never throw anything; the rotors are unforgiving. The pilot cannot help you so be extremely cautious.
8. Non-target Catches. Make maximum use of buoys to warn away swimmers, divers, and boaters. Talk to people on the lake and tell them nets are out. The potential for fatalities is real. Avoidance of areas and times of heavy public use helps reduce risk. There are major legal and emotional consequences to an accident. Don't be the first!

Appendix 3. Environmental Evaluation instructions and worksheet (NRCS-CP-52) used by USDA Natural Resources Conservation Service

## Instructions for Completing Form NRCS-CPA-52, "Environmental Evaluation Worksheet"

**COMPLETING THE FORM:** The form NRCS-CPA-52 is the instrument used to summarize the effects of conservation practices and systems. It also provides summary documentation of the environmental evaluation (EE) of the planned actions. The EE is "a concurrent part of the planning process in which the potential long-term and short-term impacts of an action on people, their physical surroundings, and nature are evaluated and alternative actions explored" (NPPH-Amendment 3 January 2000). The EE applies to all assistance provided by NRCS (GM190 Part 410.5).

The following are instructions for completing form NRCS-CPA-52:

- A** Record the client's name.
- B** Enter the conservation plan identification number.
- C** Enter the conservation management unit to which this evaluation applies. This may be done by field, pasture, tract, landuse (i.e., cropland, rangeland, woodland, etc.), by resource area (i.e., riparian corridor or wetland area), or any other suitable geographic division.
- D** Briefly summarize the client's objective(s).
- E** Briefly identify the purpose and need for action. Reference the resource concern(s) to be addressed.
- F**, **G** Use the provided resource, economic, and social considerations or list considerations identified during scoping or by any existing area wide, watershed or other resource document appropriate for the planning area. The list of considerations may be expanded by listing subcategories, such as wind erosion, sheet erosion, gully erosion, etc. Refer to the applicable quality criteria.
- H**, **I** Briefly summarize the practice/system of practices being proposed, as well as any alternatives being considered. Document the effects of the proposed action for the considerations listed in Sections **E** and **F**. Reference applicable quality criteria, information in the CPPE, and quantify effects whenever possible. Consider both long-term and short-term effects. Consider any effects, which may be individually minor but cumulatively significant at a larger scale or over an extended time period. At the request of the client, additional alternatives may be developed and their effects evaluated. This may be done in order to more fully inform the client about the decision to be made. In these cases, briefly describe alternatives to the proposed action, including the "no action" alternative. The no action alternative is the predicted future condition if no action is taken. Clearly define the differences between proposed action, no action, and the other alternatives if applicable.
- J**, **K** See the Special Environmental Concerns Evaluation Procedure Guide Sheets in Appendix 610.70 of the National the National Environmental Compliance Handbook. Completion of Help Sheets is not required, but may provide additional documentation that the appropriate processes have been followed. Complete Section **J** by documenting the effects of each alternative on the special environmental concerns listed in Section **I**. Quantify effects whenever possible. Consider both long-term and short-term effects. Consider any effects, which may be individually minor but cumulatively significant at a larger scale or over an extended time period.
- L** List any necessary easements, permissions, or permits (i.e., 404, ESA Section 10, state, county, or tribal permits or requirements).
- M** Describe mitigation to be applied that will offset any adverse impacts. Attach documentation from other agencies.
- N** The individual responsible for completing the CPA-52 must sign and date the form indicating they have used the best available information. This signature is particularly important when a TSP is completing the CPA-52 or when NRCS is providing technical assistance on behalf of another agency.
- O** Document contact and communications with USFWS, NOAA Fisheries, COE, EPA, NRCS state biologist, state environmental agencies, or any others consulted. Include public participation activities, if applicable.
- P** Check the applicable finding being made.
- Q** Explain the reasons for making the finding identified in Section **P**. Cite any references, analysis, data, or documents, which support the finding. Add additional pages as necessary. To find that an action has been sufficiently analyzed in an existing NRCS environmental document, the document must cover the area in which the action is being implemented.
- R** NRCS responsible official must sign and date for NRCS actions. The FSA or other federal agency responsible official must sign and date for FSA or other agency funded activities.

**CRITERIA FOR IDENTIFYING EXTRAORDINARY CIRCUMSTANCES.** Extraordinary circumstances usually involve impacts on environmental concerns such as wetlands, floodplains, or cultural resources. The circumstances that may lead to a determination of extraordinary circumstances are the same factors used to make determinations of significance and include:

1. Impacts that may be both beneficial and adverse and that significantly affect the quality of the human environment.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the area, such as proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be controversial.
5. The degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.
7. Individually insignificant but cumulatively significant activities that have not been analyzed on a broader level, such as on a program-wide or priority area basis.
8. Adverse effects on areas listed in or eligible for listing in the National Register of Historic Places, or that may result in loss or destruction of significant scientific, cultural, or historical resources.
9. Adverse effects on an endangered or threatened species or its designated critical habitat.
10. Circumstances threatening the violation of federal, state, tribal, or local law or requirements imposed for the protection of the environment.

If one or more extraordinary circumstances are found to apply to the proposed action, determine whether the proposal can be modified to mitigate the adverse effects and prevent the extraordinary circumstances. If this can be done and the client agrees to the change, then the proposed action may be modified and categorically excluded. If the proposed action cannot be modified or the client refuses to accept a proposed change, prepare an EA or EIS as indicated above.

If none of the extraordinary circumstances are determined to apply to the proposed action (or modified action), then it may be categorically excluded. Document the rationale for the determination in Section **Q**.



U.S. Department of Agriculture Natural Resources Conservation Service		NRCS-CPA-52 10/03		<b>A. Client:</b>	
<b>Environmental Evaluation Worksheet</b>		<b>B. Plan ID No:</b>			
		<b>C. CMU/Fields:</b>			
		<b>D. Client's Objective</b>		<b>E. Purpose and Need for Action</b>	
<b>F. Resource Considerations</b>	<b>H. Alternatives and Effects (ATTACH ADDITIONAL PAGES AS NECESSARY)</b>				
	Proposed Action	No Action	Alt 1	Alt 2	
<b>SOIL</b>					
Erosion					
Condition					
Deposition					
<b>WATER</b>					
Quantity					
Quality					
<b>AIR</b>					
Quality					
Condition					
<b>PLANT</b>					
Suitability					
Condition					
Management					
<b>ANIMAL</b>					
Habitat					
Management					

<b>G. Economic and Social Considerations</b>	<b>I. Effects</b>			
	Proposed Action	No Action	Alt 1	Alt 2
Land use				
Capital				
Labor				
Management level				
Profitability				
Risk				

J. Special Environmental Concerns (See "Evaluation Procedure Guide Sheets") Section 610.71 of National Environmental Compliance Handbook	K. Effects			
	Proposed Action	No Action	Alt 1	Alt 2
Clean Water Act/Waters of the U.S				
*Coastal Zone Management Areas				
Coral Reefs				
*Cultural Resources				
*Endangered and Threatened Species				
Environmental Justice				
*Essential Fish Habitat				
*Fish and Wildlife Coordination				
Floodplain Management				
Invasive Species				
Migratory Birds				
Natural Areas				
Prime and Unique Farmlands				
Riparian Area				
Scenic Beauty				
Wetlands				
*Wild and Scenic Rivers				

\* These items may require consultation or coordination between the lead agency/RFO and another governmental unit.

L. Easements, permissions, or permits \_\_\_\_\_

M. Mitigation \_\_\_\_\_

N. The information recorded above is based on the best available information:

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

O. Agencies, persons, and references consulted \_\_\_\_\_

**P. Findings.** Indicate which of the alternatives from Section H is the preferred alternative. \_\_\_\_\_

I have considered the effects of this action and the alternatives on the Resource, Economic, and Social Considerations; the Special Environmental Concerns; and the extraordinary circumstances criteria in the instructions for form NRCS-CPA-52. I find, for the reasons stated in Section Q below, that the selected alternative:

\_\_\_\_\_ is **not a federal action**. No additional analysis is required.

\_\_\_\_\_ is **categorically excluded** from further environmental analysis and there are no extraordinary circumstances. No additional analysis is required.

\_\_\_\_\_ has been **sufficiently analyzed** in an existing NRCS environmental document. No additional analysis is required.

\_\_\_\_\_ may require preparation of an EA or EIS. The action will be referred to the state office.

**Q. Rationale** supporting the finding \_\_\_\_\_

R. \_\_\_\_\_  
District Conservationist Signature \_\_\_\_\_ Date \_\_\_\_\_



Appendix 4. Administrative Rules of Montana (ARM) for implementation of the Montana Environmental Protection Act (MEPA) by Montana Fish, Wildlife and Parks

## ADMINISTRATIVE RULES OF MONTANA

\*\*\* THIS DOCUMENT IS CURRENT THROUGH MARCH 31, 2005 \*\*\*

TITLE 12: DEPARTMENT OF FISH, WILDLIFE AND PARKS  
CHAPTER 2: OVERALL DEPARTMENT RULES  
SUB-CHAPTER 4: RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT

## 12.2.428 POLICY STATEMENT CONCERNING MEPA RULES

The purpose of these rules is to implement Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA), through the establishment of administrative procedures. MEPA requires that state agencies comply with its terms "to the fullest extent possible." In order to fulfill the stated policy of that act, the agency shall conform to the following rules prior to reaching a final decision on proposed actions covered by MEPA.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

## 12.2.429 DEFINITIONS

1) "Action" means a project, program or activity directly undertaken by the agency; a project or activity supported through a contract, grant, subsidy, loan or other form of funding assistance from the agency, either singly or in combination with one or more other state agencies; or a project or activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies.

(2)(a) "Alternative" means:

(i) an alternate approach or course of action that would appreciably accomplish the same objectives or results as the proposed action;

(ii) design parameters, mitigation, or controls other than those incorporated into a proposed action by an applicant or by an agency prior to preparation of an EA or draft EIS;

(iii) no action or denial; and

(iv) for agency-initiated actions, a different program or series of activities that would accomplish other objectives or a different use of resources than the proposed program or series of activities.

(b) The agency is required to consider only alternatives that are realistic, technologically available, and that represent a course of action that bears a logical relationship to the proposal being evaluated.

(3) "The agency" means the Montana department of fish, wildlife, and parks.

(4) "Applicant" means a person or any other entity who applies to the agency for a grant, loan, subsidy, or other funding assistance, or for a lease, permit, license, certificate, or other entitlement for use or permission to act.

(5) "Categorical exclusion" refers to a type of action which does not individually, collectively, or cumulatively require an EA or EIS, as determined by rulemaking or programmatic review adopted by the agency, unless extraordinary circumstances, as defined by rulemaking or programmatic review, occur.

(6) "Compensation" means the replacement or provision of substitute resources or environments to offset an impact on the quality of the human environment. The agency may not consider compensation for purposes of determining the significance of impacts (see ARM 12.2.430(4)).

(7) "Cumulative impact" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.

(8) "Emergency actions" include, but are not limited to:

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(a) projects undertaken, carried out, or approved by the agency to repair or restore property or facilities damaged or destroyed as a result of a disaster when a disaster has been declared by the governor or other appropriate government entity;

(b) emergency repairs to public service facilities necessary to maintain service; and

(c) projects, whether public or private, undertaken to prevent or mitigate immediate threats to public health, safety, welfare, or the environment.

(9) "Environmental assessment" (EA) means a written analysis of a proposed action to determine whether an EIS is required or to serve one or more of the other purposes described in ARM 12.2.430(2).

(10) "Environmental impact statement" (EIS) means the detailed written statement required by section 75-1-201, MCA, which may take several forms:

(a) "Draft environmental impact statement" means a detailed written statement prepared to the fullest extent possible in accordance with 75-1-201(1)(b)(iii), MCA, and these rules;

(b) "Final environmental impact statement" means a written statement prepared to the fullest extent possible in accordance with 75-1-201, MCA, and ARM 12.2.437 or 12.2.438 and which responds to substantive comments received on the draft environmental impact statement;

(c) "Joint environmental impact statement" means an EIS prepared jointly by more than one agency, either state or federal, when the agencies are involved in the same or a closely related proposed action.

(11) "Environmental quality council" (EQC) means the council established pursuant to Title 75, chapter 1, MCA, and 5-16-101, MCA.

(12) "Human environment" includes, but is not limited to biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment. As the term applies to the agency's determination of whether an EIS is necessary (see ARM 12.2.430(1)), economic and social impacts do not by themselves require an EIS. However, whenever an EIS is prepared, economic and social impacts and their relationship to biological, physical, cultural and aesthetic impacts must be discussed.

(13) "Lead agency" means the state agency that has primary authority for committing the government to a course of action or the agency designated by the governor to supervise the preparation of a joint environmental impact statement or environmental assessment.

(14) "Mitigation" means:

(a) avoiding an impact by not taking a certain action or parts of an action;

(b) minimizing impacts by limiting the degree or magnitude of an action and its implementation;

(c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or

(d) reducing or eliminating an impact over time by preservation and maintenance operations during the life of an action or the time period thereafter that an impact continues.

(15) "Programmatic review" means an analysis (EIS or EA) of the impacts on the quality of the human environment of related actions, programs, or policies.

(16) "Residual impact" means an impact that is not eliminated by mitigation.

(17) "Scope" means the range of reasonable alternatives, mitigation, issues, and potential impacts to be considered in an environmental assessment or an environmental impact statement.

(18) "Secondary impact" means a further impact to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.

(19) "State agency", means an office, commission, committee, board, department, council, division, bureau, or section of the executive branch of state government.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

#### 12.2.430 GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS

Section 75-1-201, MCA, requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

(1) The agency shall prepare an EIS as follows:

(a) whenever an EA indicates that an EIS is necessary; or

(b) whenever, based on the criteria in ARM 12.2.431, the proposed action is a major action of state government significantly affecting the quality of the human environment.

(2) An EA may serve any of the following purposes:

(a) to ensure that the agency uses the natural and social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;

(b) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;

(c) to determine the need to prepare an EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;

(d) to ensure the fullest appropriate opportunity for public review and comment on proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and

(e) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory requirements do not allow sufficient time for an agency to prepare an EIS. The agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by ARM 12.2.439 to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.

(3) The agency shall prepare an EA whenever:

(a) the action is not excluded under (5) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(b) the action is not excluded under (5) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2) (a) and (d) through a similar planning and decision-making process; or

(c) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

(4) The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

(5) The agency is not required to prepare an EA or an EIS for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify any extraordinary circumstances in which a normally excluded action an EA or EIS;

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- (b) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;
- (c) minor repairs, operations, or maintenance of existing equipment or facilities;
- (d) investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;
- (e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and
- (f) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.431 DETERMINING THE SIGNIFICANCE OF IMPACTS 1) In order to implement 75-1-201, MCA, the agency shall determine the significance of impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare an EIS and also refers to the agency's evaluation of individual and cumulative impacts in either EAs or EISs. The agency shall consider the following criteria in determining the significance of each impact on the quality of the human environment:

- (a) the severity, duration, geographic extent, and frequency of occurrence of the impact;
- (b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;
- (c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;
- (d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;
- (e) the importance to the state and to society of each environmental resource or value that would be affected;
- (f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and
- (g) potential conflict with local, state, or federal laws, requirements, or formal plans.

(2) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.432 PREPARATION AND CONTENTS OF ENVIRONMENTAL ASSESSMENTS 1) The agency shall prepare an EA, regardless of its length or the depth of analysis, in a manner which utilizes an interdisciplinary approach. The agency may initiate a process to determine the scope of issues to be addressed in an EA. Whenever the agency elects to initiate this process, it shall follow the procedures contained in ARM 12.2.434.

(2) For a routine action with limited environmental impact, the contents of an EA may be reflected on a standard checklist format. At the other extreme, whenever an action is one that might normally require an EIS, but effects that otherwise might be deemed significant are mitigated in project design or by controls imposed by the agency, the analysis, format, and content must all be more substantial. The agency shall prepare the evaluations and present the information described in section (3) as applicable and in a level of detail appropriate to the following considerations:

- (a) the complexity of the proposed action;
- (b) the environmental sensitivity of the area affected by the proposed action;
- (c) the degree of uncertainty that the proposed action will have a significant impact on the quality of the human environment;



- (d) the need for and complexity of mitigation required to avoid the presence of significant impacts.
- (3) To the degree required in (2) above, an EA must include:
  - (a) a description of the proposed action, including maps and graphs;
  - (b) a description of the benefits and purpose of the proposed action. If the agency prepares a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it;
  - (c) a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction or environmental review responsibility for the proposed action and the permits, licenses, and other authorizations required;
  - (d) an evaluation of the impacts, including cumulative and secondary impacts, on the physical environment. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including, where appropriate: terrestrial and aquatic life and habitats; water quality, quantity, and distribution; geology; soil quality, stability, and moisture; vegetation cover, quantity and quality; aesthetics; air quality; unique, endangered, fragile, or limited environmental resources; historical and archaeological sites; and demands on environmental resources of land, water, air and energy;
  - (e) an evaluation of the impacts, including cumulative and secondary impacts, on the human population in the area to be affected by the proposed action. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including where appropriate, social structures and mores; cultural uniqueness and diversity; access to and quality of recreational and wilderness activities; local and state tax base and tax revenues; agricultural or industrial production; human health; quantity and distribution of employment; distribution and density of population and housing; demands for government services; industrial and commercial activity; locally adopted environmental plans and goals; and other appropriate social and economic circumstances;
  - (f) a description and analysis of reasonable alternatives to a proposed action whenever alternatives are reasonably available and prudent to consider and a discussion of how the alternative would be implemented;
  - (g) a listing and appropriate evaluation of mitigation, stipulations, and other controls enforceable by the agency or another government agency;
  - (h) a listing of other agencies or groups that have been contacted or have contributed information;
  - (i) the names of persons responsible for preparation of the EA; and
  - (j) a finding on the need for an EIS and, if appropriate, an explanation of the reasons for preparing the EA. If an EIS is not required, the EA must describe the reasons the EA is an appropriate level of analysis.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

**12.2.433 PUBLIC REVIEW OF ENVIRONMENTAL ASSESSMENTS** 1) The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors.

(2) An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to the agency. If the document is out-of-print, a copying charge may be levied.

(3) The agency is responsible for providing additional opportunities for public review consistent with the seriousness and complexity of the environmental issues associated with a proposed action and the level of public interest. Methods of accomplishing public review include publishing a news release or legal notice to announce the availability of an EA, summarizing its content and soliciting public comment; holding public meetings or hearings; maintaining mailing lists of persons interested in a particular action or type of action and notifying them of the availability of EAs on such actions; and distributing copies of EAs for review and comment.

(4) For an action with limited environmental impact and little public interest, no further public review may be warranted. However, where an action is one that normally requires an EIS, but effects that otherwise might be deemed significant are mitigated in the project proposal or by controls imposed by the agency, public involvement must include the opportunity for public comment, a public meeting or hearing, and adequate notice. The agency is responsible for determining appropriate methods to ensure adequate public review on a case by case basis.

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(5) The agency shall maintain a log of all EAs completed by the agency and shall submit a list of any new EAs completed to the office of the governor and the environmental quality council on a quarterly basis. In addition, the agency shall submit a copy of each completed EA to the EQC.

(6) The agency shall consider the substantive comments received in response to an EA and proceed in accordance with one of the following steps, as appropriate:

- (a) determine that an EIS is necessary;
- (b) determine that the EA did not adequately reflect the issues raised by the proposed action and issue a revised document; or
- (c) determine that an EIS is not necessary and make a final decision on the proposed action, with appropriate modification resulting from the analysis in the EA and analysis of public comment.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.434 DETERMINING THE SCOPE OF AN EIS 1) Prior to the preparation of an EIS, the agency shall initiate a process to determine the scope of the EIS.

- (2) To identify the scope of an EIS, the agency shall:
  - (a) invite the participation of affected federal, state, and local government agencies, Indian tribes, the applicant, if any, and interested persons or groups;
  - (b) identify the issues related to the proposed action that are likely to involve significant impacts and that will be analyzed in depth in the EIS;
  - (c) identify the issues that are not likely to involve significant impacts, thereby indicating that unless unanticipated effects are discovered during the preparation of the EIS, the discussion of these issues in the EIS will be limited to a brief presentation of the reasons they will not significantly affect the quality of the human environment; and
  - (d) identify those issues that have been adequately addressed by prior environmental review, thereby indicating that the discussion of these issues in the EIS will be limited to a summary and reference to their coverage elsewhere; and
  - (e) identify possible alternatives to be considered.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

#### 12.2.435 ENVIRONMENTAL IMPACT STATEMENTS--GENERAL REQUIREMENTS

The following apply to the design and preparation of EISs:

- (1) The agency shall prepare EISs that are analytic rather than encyclopedic.
- (2) The agency shall discuss the impacts of a proposed action in a level of detail that is proportionate to their significance. For other than significant issues, an EIS need only include enough discussion to show why more study is not warranted.
- (3) The agency shall prepare with each draft and final EIS a brief summary that is available for distribution separate from the EIS. The summary must describe:
  - (a) the proposed action being evaluated by the EIS, the impacts, and the alternatives;
  - (b) areas of controversy and major conclusions;
  - (c) the tradeoffs among the alternatives; and
  - (d) the agency's preferred alternative, if any.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

## 12.2.436 PREPARATION AND CONTENTS OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS

If required by these rules, the agency shall prepare a draft environmental impact statement using an interdisciplinary approach and containing the following:

- (1) a description of the proposed action, including its purpose and benefits;
- (2) a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction and a description of their responsibility for the proposed action;
- (3) a description of the current environmental conditions in the area affected by the proposed action or alternatives, including maps and charts, whenever appropriate. The description must be no longer than is necessary to understand the effects of the action and alternatives. Data analysis must be commensurate with the importance of the impact with less important material summarized, consolidated, or simply referenced;
- (4) a description of the impacts on the quality of the human environment of the proposed action including:
  - (a) the factors listed in (3)(d) and (e) of ARM 12.2.432, whenever appropriate;
  - (b) primary, secondary, and cumulative impacts;
  - (c) potential growth-inducing or growth-inhibiting impacts;
  - (d) irreversible and irretrievable commitments of environmental resources, including land, air, water and energy;
  - (e) economic and environmental benefits and costs of the proposed action; and
  - (f) the relationship between local short-term uses of man's environment and the effect on maintenance and enhancement of the long-term productivity of the environment. Where a cost-benefit analysis is prepared by the agency prior to the preparation of the draft EIS, it shall be incorporated by reference in or appended to the EIS;
- (5) an analysis of reasonable alternatives to the proposed action, including the alternative of no action and other reasonable alternatives that may or may not be within the jurisdiction of the agency to implement, if any;
- (6) a discussion of mitigation, stipulations, or other controls committed to and enforceable by the agency or other government agency;
- (7) a discussion of any compensation related to impacts stemming from the proposed action;
- (8) an explanation of the tradeoffs among the reasonable alternatives;
- (9) the agency's preferred alternative, if any, and its reasons for the preference;
- (10) a section on consultation and preparation of the draft EIS that includes the following:
  - (a) the names of those individuals or groups responsible for preparing the EIS;
  - (b) a listing of other agencies, groups, or individuals who were contacted or contributed information; and
  - (c) a summary list of source materials used in the preparation of the draft EIS;
- (11) a summary of the draft EIS as required in ARM 12.2.435; and
- (12) other sections that may be required by other statutes in a comprehensive evaluation of the proposed action, or by the National Environmental Policy Act or other federal statutes governing a cooperating federal agency.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.437 ADOPTION OF DRAFT ENVIRONMENTAL IMPACT STATEMENT AS FINAL 1) Depending upon the substantive comments received in response to the draft EIS, the draft statement may suffice. The agency shall determine whether to adopt the draft EIS within 30 days of the close of the comment period on the draft EIS.

(2) In the event the agency determines to adopt the draft EIS, the agency shall notify the governor, the Environmental Quality Council, the applicant, if any, and all commenters of its decision and provide a statement

describing its proposed course of action. This notification must be accompanied by a copy of all comments or a summary of a representative sample of comments received in response to the draft statement, together with, at minimum, an explanation of why the issues raised do not warrant the preparation of a final EIS.

(3) The agency shall provide public notice of its decision to adopt the draft EIS as a final.

(4) If the agency decides to adopt the draft EIS as the final EIS, it may make a final decision on the proposed action no sooner than 15 days after complying with subsections (1) through (3) above.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

#### 12.2.438 PREPARATION AND CONTENTS OF FINAL ENVIRONMENTAL IMPACT STATEMENT

Except as provided in ARM 12.2.437, a final environmental impact statement must include:

(1) a summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft;

(2) a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the agency (in all cases, a representative sample of comments must be included);

(3) the agency's responses to substantive comments, including an evaluation of the comments received and disposition of the issues involved;

(4) data, information, and explanations obtained subsequent to circulation of the draft; and

(5) the agency's recommendation, preferred alternative, or proposed decision together with an explanation of the reasons therefor.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.439 TIME LIMITS AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS 1) Following preparation of a draft EIS, the agency shall distribute copies to the governor, EQC, appropriate state and federal agencies, the applicant, if any, and persons who have requested copies.

(2) The listed transmittal date to the governor and the EQC must not be earlier than the date that the draft EIS is mailed to other agencies, organizations, and individuals. The agency shall allow 30 days for reply, provided that the agency may extend this period up to an additional 30 days at its discretion or upon application of any person for good cause. When preparing a joint EIS with a federal agency or agencies, the agency may also extend this period in accordance with time periods specified in regulations that implement the National Environmental Policy Act. However, no extension which is otherwise prohibited by law may be granted.

(3) In cases involving an applicant, after the period for comment on the draft EIS has expired, the agency shall send to the applicant a copy of all written comments that were received. The agency shall advise the applicant that he has a reasonable time to respond in writing to the comments received by the agency on the draft EIS and that the applicant's written response must be received before a final EIS can be prepared and circulated. The applicant may waive his right to respond to the comments on the draft EIS.

(4) Following preparation of a final EIS, the agency shall distribute copies to the governor, EQC, appropriate state and federal agencies, the applicant, if any, persons who submitted comments on or received a copy of the draft EIS, and other members of the public upon request.

(5) Except as provided by ARM 12.2.437(4), a final decision must not be made on the proposed action being evaluated in a final EIS until 15 days have expired from the date of transmittal of the final EIS to the governor and EQC. The listed transmittal date to the governor and EQC must not be earlier than the date that the final EIS is mailed to other agencies, organizations, and individuals.

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(6) All written comments received on an EIS, including written responses received from the applicant, must be made available to the public upon request.

(7) Until the agency reaches its final decision on the proposed action, no action concerning the proposal may be taken that would:

- (a) have an adverse environmental impact; or
- (b) limit the choice of reasonable alternatives, including the no-action alternative.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.440 SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS 1) The agency shall prepare supplements to either draft or final environmental impact statements whenever:

- (a) the agency or the applicant makes a substantial change in a proposed action;
- (b) there are significant new circumstances, discovered prior to final agency decision, including information bearing on the proposed action or its impacts that change the basis for the decision; or
- (c) following preparation of a draft EIS and prior to completion of a final EIS, the agency determines that there is a need for substantial, additional information to evaluate the impacts of a proposed action or reasonable alternatives.

(2) A supplement must include, but is not limited to, a description of the following:

- (a) an explanation of the need for the supplement;
- (b) the proposed action; and
- (c) any impacts, alternatives or other items required by ARM 12.2.436 for a draft EIS or ARM 12.2.438 for a final EIS that were either not covered in the original statement or that must be revised based on new information or circumstances concerning the proposed action.

(3) The same time periods applicable to draft and final EISs apply to the circulation and review of supplements.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.441 ADOPTION OF AN EXISTING EIS 1) The agency shall adopt as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS that has been previously or is being concurrently prepared pursuant to MEPA or the National Environmental Policy Act if the agency determines:

- (a) that the existing EIS covers an action paralleling or closely related to the action proposed by the agency or the applicant;
- (b) on the basis of its own independent evaluation, that the information contained in the existing EIS has been accurately presented; and
- (c) that the information contained in the existing EIS is applicable to the action currently being considered.

(2) A summary of the existing EIS or the portion adopted and a list of places where the full text is available must be circulated as a part of the EIS and treated as part of the EIS for all purposes, including, if required, preparation of a final EIS.

(3) Adoption of all or part of an existing EIS does not relieve the agency of the duty to comply with ARM 12.2.436.

(4) The same time periods applicable to draft and final EISs apply to the circulation and review of EISs that include material adopted from an existing EIS.

(5) The agency shall take full responsibility for the portions of a previous EIS adopted. If the agency disagrees with certain adopted portions of the previous EIS, it shall specifically discuss the points of disagreement.

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(6) No material may be adopted unless it is reasonably available for inspection by interested persons within the time allowed for comment.

(7) Whenever part of an existing EIS or concurrently prepared EIS is adopted, the part adopted must include sufficient material to allow the part adopted to be considered in the context in which it was presented in the original EIS.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.442 INTERAGENCY COOPERATION 1) Whenever it is the lead agency responsible for preparation of an EIS, the agency may:

(a) request the participation of other governmental agencies which have special expertise in areas that should be addressed in the EIS;

(b) allocate assignments, as appropriate, for the preparation of the EIS among other participating agencies; and

(c) coordinate the efforts of all affected agencies.

(2) Whenever participation of the agency is requested by a lead agency, the agency shall make a good-faith effort to participate in the EIS as requested, with its expenses for participation in the EIS paid by the lead agency or other agency collecting the EIS fee if one is collected.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.443 JOINT ENVIRONMENTAL IMPACT STATEMENTS AND EA'S 1) Whenever the agency and one or more other state agencies have jurisdiction over an applicant's proposal or major state actions that individually, collectively, or cumulatively require an EIS and another agency is clearly the lead agency, the agency shall cooperate with the lead agency in the preparation of a joint EIS. Whenever it is clearly the lead agency, the agency shall coordinate the preparation of the EIS as required by this rule. Whenever the agency and one or more agencies have jurisdiction over an applicant's proposal or major state actions and lead agency status cannot be resolved, the agency shall request a determination from the governor.

(2) The agency shall cooperate with federal and local agencies in preparing EISs when the jurisdiction of the agency is involved. This cooperation may include, but is not limited to: joint environmental research studies, a joint process to determine the scope of an EIS, joint public hearings, joint EISs, and, whenever appropriate, joint issuance of a record of decision.

(3) Whenever the agency proposes or participates in an action that requires preparation of an EIS under both the National Environmental Policy Act and MEPA, the EIS must be prepared in compliance with both statutes and associated rules and regulations. The agency may, if required by a cooperating federal agency, accede to and follow more stringent requirements, such as additional content or public review periods, but in no case may it accede to less than is provided for in these rules.

(4) The same general provisions for cooperation and joint issuance of documents provided for in this rule in connection with EISs also apply to EAs.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.444 PREPARATION, CONTENT, AND DISTRIBUTION OF A PROGRAMMATIC REVIEW 1) Whenever the agency is contemplating a series of agency-initiated actions, programs, or policies which in part or in total may constitute a major state action significantly affecting the human environment, it shall prepare a programmatic review discussing the impacts of the series of actions.

(2) The agency may also prepare a programmatic review whenever required by statute, whenever a series of actions under the jurisdiction of the agency warrant such an analysis as determined by the agency, or whenever prepared as a joint effort with a federal agency requiring a programmatic review.

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(3) The agency shall determine whether the programmatic review takes the form of an EA or an EIS in accordance with the provisions of ARM 12.2.430 and 12.2.431, unless otherwise provided by statute.

(4) A programmatic review must include, as a minimum, a concise, analytical discussion of alternatives and the cumulative environmental effects of these alternatives on the human environment. In addition programmatic reviews must contain the information specified in ARM 12.2.436 for EISs or ARM 12.2.432 for EAs, as applicable.

(5) The agency shall adhere to the time limits specified for distribution and public comment on EISs or EAs, whichever is applicable.

(6) While work on a programmatic review is in progress, the agency may not take major state actions covered by the program in that interim period unless such action:

(a) is part of an ongoing program;

(b) is justified independently of the program; or

(c) will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program if it tends to determine subsequent development or foreclose reasonable alternatives.

(7) Actions taken under subsection (6) must be accompanied by an EA or an EIS, if required.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

#### 12.2.445 RECORD OF DECISION FOR ACTIONS REQUIRING POLICY ACT ENVIRONMENTAL IMPACT

STATEMENTS 1) At the time of its decision concerning a proposed action for which an EIS was prepared, the agency shall prepare a concise public record of decision. The record, which may be integrated into any other documentation of the decision that is prepared by the agency, is a public notice of what the decision is, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

(2) The agency may include in the final EIS, in addition to a statement of its proposed decision, preferred alternative, or recommendation on the proposed action, the other items required by (1), and additional explanation as provided for in (3) below. If the final decision and the reasons for that final decision are the same as set forth in the final EIS, the agency may comply with (1) by preparing a public notice of what the decision is and adopting by reference the information contained in the final EIS that addresses the items required by (1). If the final decision or any of the items required by (1) are different from what was presented in the final EIS, the agency is responsible for preparing a separate record of decision.

(3) There is no prescribed format for a record of decision, except that it must include the items listed in (1). The record may include the following items as appropriate:

(a) brief description of the context of the decision;

(b) the alternatives considered;

(c) advantages and disadvantages of the alternatives;

(d) the alternative or alternatives considered environmentally preferable;

(e) short and long-term effects of the decision;

(f) policy considerations that were balanced and considered in making the decision;

(g) whether all practical means to avoid or minimize environmental harm were adopted, and if not, why not; and

(h) a summary of implementation plans, including monitoring and enforcement procedures for mitigation, if any.

(4) This rule does not define or affect the statutory decision making authority of the agency.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

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12.2.446 EMERGENCIES 1) The agency may take or permit action having a significant impact on the quality of the human environment in an emergency situation without preparing an EIS. Within 30 days following initiation of the action, the agency shall notify the governor and the EQC as to the need for the action and the impacts and results of it. Emergency actions must be limited to those actions immediately necessary to control the impacts of the emergency.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.447 CONFIDENTIALITY 1) Information declared confidential by state law or by an order of a court must be excluded from an EA and EIS. The agency shall briefly state the general topic of the confidential information excluded.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.448 RESOLUTION OF STATUTORY CONFLICTS 1) Whenever a conflicting provision of another state law prevents the agency from fully complying with these rules the agency shall notify the governor and the EQC of the nature of the conflict and shall suggest a proposed course of action that will enable the agency to comply to the fullest extent possible with the provisions of MEPA. This notification must be made as soon as practical after the agency recognizes that a conflict exists, and no later than 30 days following such recognition.

(2) The agency has a continuing responsibility to review its programs and activities to evaluate known or anticipated conflicts between these rules and other statutory or regulatory requirements. It shall make such adjustments or recommendations as may be required to ensure maximum compliance with MEPA and these rules.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.449 CONTRACTS AND DISCLOSURE 1) The agency may contract for preparation of an EIS or portions thereof. Whenever an EIS or portion thereof is prepared by a contractor, the agency shall furnish guidance and participate in the preparation, independently evaluate the statement or portion thereof prior to its approval, and take responsibility for its scope and content.

(2) A person contracting with the agency in the preparation of an EIS must execute a disclosure statement, in affidavit form prepared by the agency, specifying that he has no financial or other interest in the outcome of the proposed action other than a contract with the agency.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.450 PUBLIC HEARINGS 1) Whenever a public hearing is held on an EIS or an EA, the agency shall issue a news release legal notice to newspapers of general circulation in the area to be affected by the proposed action prior to the hearing. The news release or legal notice must advise the public of the nature of testimony the agency wishes to receive at the hearing. The hearing must be held after the draft EIS has been circulated and prior to preparation of the final EIS. A hearing involving an action for which an EA was prepared must be held after the EA has been circulated and prior to any final agency determinations concerning the proposed action. In cases involving an applicant, the agency shall allow an applicant a reasonable time to respond in writing to comments made at a public hearing, notwithstanding the time limits contained in ARM 12.2.439. The applicant may waive his right to respond to comments made at a hearing.

(2) In addition to the procedure in (1) above, the agency shall take such other steps as are reasonable and appropriate to promote the awareness by interested parties of a scheduled hearing.

(3) The agency shall hold a public hearing whenever requested within 20 days of issuance of the draft EIS by either:

- (a) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action;
- (b) by another agency which has jurisdiction over the action;
- (c) an association having not less than 25 members who will be directly affected by the proposed action; or



(d) the applicant, if any.

(4) In determining whether a sufficient number of persons have requested a hearing as required by subsection (3), the agency shall resolve instances of doubt in favor of holding a public hearing.

(5) No person may give testimony at the hearing as a representative of a participating agency. Such a representative may, however, at the discretion of the hearing officer, give a statement regarding his or her agency's authority or procedures and answer questions from the public.

(6) Public meetings may be held in lieu of formal hearings as a means of soliciting public comment on an EIS where no hearing is requested under (3) above. However, the agency shall provide adequate advance notice of the meeting; and, other than the degree of formality surrounding the proceedings, the objectives of such a meeting are essentially the same as those for a hearing.

(History: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.451 FEES: DETERMINATION OF AUTHORITY TO IMPOSE 1) Whenever an application for a lease, permit, contract, license or certificate is expected to result in the agency incurring expenses in excess of \$ 2,500 to compile an EIS, the applicant is required to pay a fee in an amount the agency reasonably estimates, as set forth in this rule, will be expended to gather information and data necessary to compile an EIS.

(2) The agency shall determine within 30 days after a completed application is filed whether it will be necessary to compile an EIS and assess a fee as prescribed by this rule. If it is determined that an EIS is necessary, the agency shall make a preliminary estimate of its costs. This estimate must include a summary of the data and information needs and the itemized costs of acquiring the data and information, including salaries, equipment costs and any other expense associated with the collection of data and information for the EIS.

(3) Whenever the preliminary estimated costs of acquiring the data and information to prepare an EIS total more than \$ 2,500, the agency shall notify the applicant that a fee must be paid and submit an itemized preliminary estimate of the cost of acquiring the data and information necessary to compile an EIS. The agency shall also notify the applicant to prepare and submit a notarized and detailed estimate of the cost of the project being reviewed in the EIS within 15 days. In addition, the agency shall request the applicant to describe the data and information available or being prepared by the applicant which can possibly be used in the EIS. The applicant may indicate which of the agency's estimated costs of acquiring data and information for the EIS would be duplicative or excessive. The applicant must be granted, upon request, an extension of the 15-day period for submission of an estimate of the project's cost and a critique of the agency's preliminary EIS data and information accumulation cost assessment.

(History: Sec. 75-1-202, MCA; IMP, Sec. 75-1-202, 203, 205, 206 and 207, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.452 FEES: DETERMINATION OF AMOUNT 1) After receipt of the applicant's estimated cost of the project and analysis of an agency's preliminary estimate of the cost of acquiring information and data for the EIS, the agency shall notify the applicant within 15 days of the final amount of the fee to be assessed. The fee assessed must be based on the projected cost of acquiring all of the information and data needed for the EIS. If the applicant has gathered or is in the process of gathering information and data that can be used in the EIS, the agency shall only use that portion of the fee that is needed to verify the information and data. Any unused portion of the fee assessed may be returned to the applicant within a reasonable time after the information and data have been collected or the information and data submitted by the applicant have been verified, but in no event later than the deadline specified in these rules. The agency may extend the 15-day period provided for review of the applicant's submittal but not to exceed 45 days if it believes that the project cost estimate submitted is inaccurate or additional information must be obtained to verify the accuracy of the project cost estimate. The fee assessed must not exceed the limitations provided in 75-1-203(2), MCA.

(2) If an applicant believes that the fee assessed is excessive or does not conform to the requirements of this rule or Title 75, chapter 1, part 2, MCA, the applicant may request a hearing pursuant to the contested case provisions of the Montana Administrative Procedure Act. If a hearing is held on the fee assessed as authorized by this subsection, the agency shall proceed with its analysis of the project wherever possible. The fact that a hearing has been requested is not

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grounds for delaying consideration of an application except to the extent that the portion of the fee in question affects the ability of the department to collect the data and information necessary for the EIS.

(History: Sec. 75-1-202 MCA; IMP, Sec. 75-1-202, 75-1-203, 75-1-205, 75-1-206 and 75-1-207 MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.453 USE OF FEE 1) The fee assessed hereunder may only be used to gather data and information necessary to compile an EIS. No fee may be assessed if an agency intends only to compile an EA or a programmatic review. If a department collects a fee and later determines that additional data and information must be collected or that data and information supplied by the applicant and relied upon by the agency are inaccurate or invalid, an additional fee may be assessed under the procedures outlined in these rules if the maximum fee has not been collected.

(2) Whenever the agency has completed work on the EIS, it shall submit to the applicant a complete accounting of how any fee was expended. If the money expended is less than the fee collected, the remainder of the fee shall be refunded to the applicant without interest within 45 days after work has been completed on the final EIS.

(History: Sec. 75-1-202 MCA; IMP, Sec. 75-1-202, 75-1-203, 75-1-205, 75-1-206 and 75-1-207 MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)

12.2.454 ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION 1) The following types of actions do not individually, collectively, or cumulatively require the preparation of an environmental assessment or an environmental impact statement unless the action involves one or more of the extraordinary circumstances stated in (2) below:

- (a) construction of riparian fences to protect streambanks;
- (b) minor improvements in fish habitat by placement of habitat improvement structures;
- (c) removal or modification of man-made obstructions in stream channels to provide or improve fish passage or to prevent loss of fish into diversions;
- (d) clean up of trash or debris in the river corridor;
- (e) vegetative bank stabilization projects;
- (f) spawning channel development to provide additional habitat for reproduction;
- (g) inventory, survey or engineering activities for design or development of plans for river restoration and future fisheries improvement program projects;
- (h) maintenance or repair of existing river restoration and future fisheries improvement program projects;
- (i) improvement in fish habitat in lakes or reservoirs that do not pose a hazard to navigation.

(2) The preparation of an environmental assessment or an environmental impact statement will be required if the project involves any of the following:

- (a) significant impacts to publicly owned parklands, recreation areas, wildlife refuges or significant historic sites;
- (b) disturbance to a streambed that is significant enough to require a temporary exemption from water quality standards for turbidity;
- (c) significant impact on air, noise, or water quality;
- (d) significant impact on the human environment that may result in relocations of persons or business;
- (e) substantial controversy on environmental grounds;
- (f) any other kind of significant environmental impact, including cumulative or secondary impacts.

(History: Sec. 2-3-103, 2-4-201 MCA; IMP, Sec. 2-3-104, 75-1-201 MCA; NEW, 1994 MAR p. 2129, Eff. 8/12/94; AMD, 1996 MAR p.153, Eff. 1/12/96.)

Appendix 5. Private Property Act assessment checklist for compliance with Chapter 462, Laws of Montana (1995).

## PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

***(LIST ANY MITIGATION OR STIPALTIONS REQUIRED, OR NOTE "NONE")***

*None*

### **DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

**YES**

**NO**

- |       |              |   |
|-------|--------------|---|
| _____ | <u>  X  </u> | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights? |
| _____ | <u>  X  </u> | 2. Does the action result in either a permanent or indefinite physical occupation of private property?                              |
| _____ | <u>  X  </u> | 3. Does the action deprive the owner of all economically viable uses of the property?   |
| _____ | <u>  X  </u> | 4. Does the action deny a fundamental attribute of ownership?   |

_____	<u>  X  </u>	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is <b>NO</b> , skip questions 5a and 5b and continue with question 6.]
_____	_____	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
_____	_____	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
_____	<u>  X  </u>	6. Does the action have a severe impact on the value of the property?
_____	<u>  X  </u>	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is <b>NO</b> , do not answer questions 7a-7c.]
_____	_____	7a. Is the impact of government action direct, peculiar, and significant?
_____	_____	7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
_____	_____	7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

Appendix 6. National Environmental Policy Act (NEPA) federal activities checklist  
(Form 3-2185) used by the US Fish and Wildlife Service

## NEPA COMPLIANCE CHECKLIST

State: \_\_\_\_\_ Federal Financial Assistance Grant/Agreement/Amendment Number: \_\_\_\_\_  
Grant/Project Name: \_\_\_\_\_

This proposal ☐ is; ☐ is **not** completely covered by categorical exclusion \_\_\_\_\_ in 516 DM 2, Appendix \_\_\_\_\_; and/or 516 DM 6, Appendix \_\_\_\_\_.  
(check (✓) one) (Review proposed activities. An appropriate categorical exclusion must be identified before completing the remainder of the Checklist. If a categorical exclusion cannot be identified, or the proposal cannot meet the qualifying criteria in the categorical exclusion, or an extraordinary circumstance applies (see below), an EA must be prepared.)

### Extraordinary Circumstances:

Will This Proposal (check (✓) yes or no for each item below):

Yes No

- |                          |                          |     |  |
|--------------------------|--------------------------|-----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1.  | Have significant adverse effects on public health or safety.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 2.  | Have significant adverse effects on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas under Federal ownership or jurisdiction. |
| <input type="checkbox"/> | <input type="checkbox"/> | 3.  | Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].   |
| <input type="checkbox"/> | <input type="checkbox"/> | 4.  | Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 5.  | Have a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 6.  | Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 7.  | Have significant adverse effects on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau or office, the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, or a consulting party under 36 CFR 800.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 8.  | Have significant adverse effects on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant adverse effects on designated Critical Habitat for these species.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 9.  | Have the possibility of violating a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. | Have the possibility for a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).   |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. | Have the possibility to limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).  |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. | Have the possibility to significantly contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).  |

(If any of the above extraordinary circumstances receive a ☐Yes☐ check (✓), an EA must be prepared.)

☐ Yes ☐ No This grant/project includes additional information supporting the Checklist.

### Concurrences/Approvals:

Project Leader: \_\_\_\_\_ Date: \_\_\_\_\_

State Authority Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

(with financial assistance signature authority, if applicable)

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the grant/agreement/amendment:

- ☐ is a categorical exclusion as provided by 516 DM 6, Appendix 1 and/or 516 DM 2, Appendix 1. No further NEPA documentation will therefore be made.
- ☐ is not completely covered by the categorical exclusion as provided by 516 DM 6, Appendix 1 and/or 516 DM 2, Appendix 1. An EA must be prepared.

### Service signature approval:

RO or WO Environmental Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

Staff Specialist, Division of Federal Assistance: \_\_\_\_\_ Date: \_\_\_\_\_

(or authorized Service representative with financial assistance signature authority)